UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE

MIGUEL ANGEL CHRISTOBAL LOPEZ, et. al.	)	
	)	
v.	)	NO. 2:11-CV-113
	)	
JIMMY CARROLL FISH d/b/a FISH FARMS, et. al.	)	

O R D E R

Pending before the Court is the defendants' Motion to Dismiss. [Doc. 18]. Plaintiffs have responded and the Motion is now ripe for adjudication.

BACKGROUND

This matter arises from the temporary employment of Mexican farm workers in the United States through the Department of Labor's ("DOL") H-2A program. The plaintiffs are fifteen former H-2A guest workers who were employed by defendants Jimmy Fish, Walter Fish, and Christine Fish Gilliam, doing business as "Fish Farms," (collectively, "Fish Farms") between June and September of 2010. Count I alleges that defendants violated the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq* ("FLSA"), by retaliating against plaintiffs for, *inter alia*, filing a complaint with the DOL. Count II alleges that defendants violated 42 U.S.C. § 1981 by, *inter alia*, denying plaintiffs' contractual minimum wages because of plaintiffs' race or ethnicity. Counts III-V alleges various state law causes of action. Specifically, Count III alleges that defendants violated the Tennessee Public Protection Act, T.C.A. § 50-1-304; Count IV alleges that defendants violated the Tennessee Human Rights Act, and Count V alleges that defendants breached their contract with plaintiffs.

Defendants have filed the instant Motion to Dismiss, asserting the following two reasons for dismissal: (1) plaintiffs, as citizens and residents of Mexico, lack standing to sue defendants for violations of their rights as H-2A workers, and (2) the pertinent H-2A statute (§ 1188 of the Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq*) grants exclusive authority to the Secretary of Labor to enforce the employment terms and conditions of H-2A workers.

ANALYSIS

At its core, defendants' brief in support of the instant motion argues that but for the Immigration and Nationality Act ("INA") and the pertinent regulations thereunder, plaintiffs would not be permitted to legally work in the United States. Thus, defendants argue, all of the Counts in plaintiffs' Complaint sound as causes of action under the INA, which only the Secretary of Labor has standing to enforce. As plaintiffs correctly point out in their response, such argument represents a gross misunderstanding of the law.

As noted, *supra*, plaintiffs' claims sound under various federal and state statutes. However, none of these claims arise under the INA. Furthermore, defendants fail to cite a single case that stands for, or even supports, the proposition that the INA preempts the claims in plaintiffs' Complaint.

With respect to Count I, for example, "it is well established that the protections of the Fair Labor Standards Act are applicable to citizens and aliens alike and whether the alien is documented or undocumented is irrelevant." *In re Reyes*, 814 F.2d 168, 170 (5th Cir. 1987). Thus, the Court of Appeals for the Eleventh Circuit has recognized that "[t]he protections of the minimum wage provisions of the FLSA indisputably apply to the [H-2A] Farmworkers." *Arriaga v. Florida Pacific Farms, LLC*, 305 F.3d 1228, 1235 (11th Cir. 2002). *See also, Patel v. Quality Inn South*, 846 F.2d 700, 704-5 (11th Cir. 1988) ("The IRCA's legislative history strongly suggests that Congress believed that undocumented aliens would continue to be protected by the FLSA. . . . We therefore conclude that undocumented aliens continue to be 'employees' covered by the FLSA.").[1]

It is also clear that plaintiffs may pursue their state law claims. For example, there are federal cases too numerous to count which have held that H-2A workers may pursue state breach of contact claims against employers who fail to comply with clearance orders[2] issued by the DOL. *See, e.g.*, *Arriaga*, 305 F.3d at 1228 n.5 (agreeing with parties that clearance orders constituted valid contracts and permitting recovery on same); *Frederick County Fruit Growers Association, Inc. v. Martin*, 968 F.2d 1265, 1268 (D.C. Cir. 1992) (affirming district court's award of backpay under a contract theory, explaining, "Each grower's promise in the job clearance order created a contractual obligation running from that grower to each of its workers."); *Salazar-Calderon v. Presidio Valley Farmers Association*, 765 F.2d 1334, 1342 (5th Cir. 1985) (holding that terms of employment set out in DOL's H-2 regulations were the terms the employer was required to offer and permitting private right of recovery by H-2A workers based on contract theory); *Perez-Benites v. Candy Brand, LLC*, 2011 WL 1978414 at *15-6 (W.D. Ark. May 20, 2011) (holding that employer was liable to H-2A workers for breaching clearance order); *Vazquez v. Lamont Fruit Farm, Inc.*, 2011 WL 4572066 at *11 (W.D.N.Y. Sept. 30, 2011) (certifying class action with respect to breach of contract claim brought by H-2A workers); *Garcia-Celestino v. Ruiz Harvesting, Inc.*, 2012 WL 602728 at *7 (M.D. Fla. Feb. 24, 2012) (certifying class action with respect to contract claim and also with respect to claim alleging violation of Florida Constitution's minimum wage provisions).

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[1]The Immigration Reform and Control Act of 1986 ("IRCA") amends the INA and makes it unlawful to hire illegal aliens and provides for sanctions against employers who do. *See Patel*, 846 F.2d at 701.

[2]As part of the process of seeking approval from the DOL to hire H-2A workers, employers must submit applications that include specific representations including wages, hours, and working conditions. 20 C.F.R. § 653.501. These applications are called "clearance orders." *Arriaga*, 305 F.3d at 1233 n.5. Once approved, "the clearance orders ultimately become the work contract between the employers and farmworkers." *Id*.

In light of the foregoing, there is no need for the Court to delve any further into defendants' argument, as it is completely unsubstantiated and devoid of merit.

CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss [Doc. 18] is hereby DENIED.

ENTER:

s/J. RONNIE GREER
UNITED STATES DISTRICT JUDGE